IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 14TH MARCH 2007 / 23RD PHALGUNA 1928

WP(C).No. 31634 of 2006(N)

PETITIONER:

K.P.RAMA WARRIER,
MANAGER, A.U.P.SCHOOL,
POMBRA, P.O.POMBRA,
KARAKURUSSI, PALAKKAD DISTRICT.

BY ADV. SRI.N.N.SUGUNAPALAN (SR.)
SRI.S.SUJIN

RESPONDENTS:

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1. M.J.ELSAMMA, A.U.P.SCHOOL,
POMBRA, KARAKURUSSI,
PALAKKAD DISTRICT.

2. THE DEPUTY TAHSILDAR (R.R.),
OTTAPALAM.

3. THE VILLAE OFFICER,
KARIMPUZHA-II VILLAGE,
ELAMPULASSERY, POMBRA.

4. THE ASSISTANT EDUCATIONAL OFFICER,
CHERPULASSERY, PALAKKAD DISTRICT.

5. THE DISTRICT EDUCATIONAL OFFICER,
OTTAPALAM.

6. THE SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVT. PLEADER SRI. A.J. VARGHESE.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.M.JOSEPH, J.

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WP.(C) No. 31634 OF 2006

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Dated this the 14th day of March, 2007

JUDGMENT

Case of the petitioner in brief is as follows:

Petitioner is the Manager of an Aided School. Petitioner placed the first respondent Headmistress under suspension with effect from 27.1.1993. AEO conducted a preliminary enquiry and found that the first respondent has to be reinstated. Petitioner challenged the said order before the Government under Rule 92 of Chapter XIVA KER. That being dismissed, petitioner challenged the orders before this court by filing O.P. No.14981 of 1993. The AEO on the request of the first respondent directed disbursement of salary under Rule 67(8). Manager was directed to draw and disburse the salary. Petitioner challenged the order of the fourth respondent before the Government. The fourth respondent passed an order apparently keeping it in abeyance till final orders are passed by this court in the pending writ petition. The first respondent challenged the same in O.P.13312 of 1994. By a common judgment this court dismissed the writ petition filed by the Manager

and allowed the writ petition filed by the first respondent, allowing her to join immediately. Manager preferred two writ appeals. By Ext.P2 judgment the writ appeals were disposed of holding that the AEO has not exceeded the powers under Rule 67(8). Petitioner was seeking a detailed enquiry under Rule 75 vide Exts.P3, P4 and P5. Revenue recovery proceedings were initiated to recover Rs.8,00,229/- vide Ext.P6 demand notice, though not ordered immediately. Petitioner filed Ext.P7 revision before the Government. Petitioner challenged recovery proceedings by filing W.P.(C) No.3980 of 2003. This court directed deposit of Rs.2 Lakhs as Fixed Deposit with the AEO, Cherpulassery to ensure payments due to the petitioner and the salary disbursed by the Government. Ultimately this court directed Ext.P7 to be considered by Ext.P8 judgment. Ext.P9 is the order passed by the Government. Petitioner challenges Exts.P6 and P9. Even though petitioner has a case that AEO has no jurisdiction in the matter, as the School is a UP School there is no substance in that contention. The further contention is that the petitioner had requested for a detailed enquiry and it has not yielded result. In this regard petitioner has relied

on Ext.P2 judgment. In the judgment it is stated as follows:

> "It is apparent that the Assistant Educational Officer was expressing his view that there were no sufficient grounds for placing the teacher under suspension. He was not giving a final verdict on the merits of the allegations against the teacher. This is obvious from the last sentence in the order dated 12.2.1993 of the Assistant Educational Officer, which reads as follows:
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> > "A detailed enquiry about the same may be conducted at the beginning of the next Academic year, if the manager wishes."
>
> In other words, the Assistant Educational Officer has not foreclosed the opportunity to conduct an enquiry under Rule 75 of Chapter XIVA KER., if requested by the Manager. In the above circumstances, we are not inclined to accept the contention of the learned counsel for the appellant that while issuing the order dated 12.2.1993 directing to reinstate the teacher from the date of suspension, the Asst. Educational Officer exceeded his power under Rule 67(8) of Chapter XIVA KER."

He would submit that if a detailed enquiry were held, truth would have been established and there is no warrant to proceed against the petitioner at this stage. I am unable to see any substance in this contention also. It is to be noted that this is a case where preliminary enquiry was conducted by the educational officer and he found that there is no basis to keep the teacher under continued suspension. The

Manager was directed to reinstate the teacher. The order was not complied with. Consequently invoking the power under Rule 67 Chapter XIVA KER salary of the teacher was disbursed. It is in such circumstances, recovery proceedings are launched to recover the amount paid by the Government. Apparently there can be no complaint in law available to the petitioner against such recovery. Reliance placed on Ext.P2 judgment is completely misplaced. In the same the Division Bench has only referred to order dated 12.2.1993 of the AEO, wherein it is inter alia stated that a detailed enquiry about the same may be conducted at the beginning of the next academic year if the Manager wishes. The Division Bench further proceeded to note that the AEO has not foreclosed the opportunity to conduct an enquiry under Rule 75 of Chapter XIV A KER, if requested by the Manager. The holding of the detailed enquiry under Rule 75 cannot absolve the Manager of the liability incurred under Rule 67 by virtue of the payments made by the Government to the teacher and consequential liability, which the Manager incurred for paying the amount to the Government. The fact that ultimately under Rule 75 enquiry it is established that the teacher

was blameworthy, it cannot absolve the Manager of its duty to comply with the orders passed by the Educational Authorities under the statutory rule. In this case, the statute contemplates suspension only upto 15 days without consent of the educational authorities. Beyond 15 days continued suspension is permissible only following preliminary enquiry the appropriate educational authority being satisfied that continued suspension is warranted. If the teacher is not reinstated the teacher shall be deemed to have been on duty and it shall then be open to the department to disburse the salary to the teacher as if he were not suspended and recover the amount so disbursed from the Manager. It is precisely this situation which has arisen in this case and therefore Ext.P6 demand notice issued appears to be valid.

In such circumstances, the complaint made against the same vide Ext.P7 appears to be without basis. Accordingly the writ petition is dismissed.

(K.M. JOSEPH, JUDGE)

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K.M.JOSEPH, JJ.

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W.A. No. OF

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JUDGMENT

Dated this the day of February, 2006.